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In re Application of: KOCHER, Pascal :
Application No.: 10/574,208 :
PCT No.: PCT/DE04/01630 : DECISION ON REQUEST
Int. Filing Date: 22 July 2004 :
Priority Date: 28 October 2003 :
Attorney Docket No.: 101914206 :
For: DEVICE FOR FATIGUE WARNING IN :
MOTOR VEHICLES HAVING A :
RUN-UP ALARM SYSTEM :

This decision is issued in response to applicant's "Petition To Withdraw Holding Of Abandonment" filed 11 December 2007, treated herein as a petition under 37 CFR 1.181. No petition fee is required.

BACKGROUND

On 22 July 2004, applicant filed international application PCT/DE04/01630 which claimed a priority date of 28 October 2003 and which designated the United States. On 19 May 2005, a copy of the international application was communicated to the United States Patent And Trademark Office (USPTO) by the International Bureau (IB). The deadline for submission of the basic national fee was thirty months from the priority date, i.e., 28 April 2006.

On 30 March 2006, applicant filed a Transmittal Letter for entry into the national stage in the United States accompanied by, among other materials, payment of the basic national fee, a copy of the international application, and a preliminary amendment.

On 08 March 2007, the United States Designated/Elected Office (DO/EO/US) mailed a Notification Of Missing Requirements (Form PCT/DO/EO/905) indicating that a properly executed oath or declaration in compliance with 37 CFR 1.497 was required.

On 16 November 2007, the United States Designated/Elected Office (DO/EO/US) mailed a Notification Of Abandonment (Form PCT/DO/EO/909) indicating that the application was abandoned for failure to respond to the Notification Of Missing Requirements.

On 11 December 2007, the petition considered herein was filed. The petition asserts that on 08 May 2007 applicants filed a timely response to the Notification Of Missing Requirements, including an executed declaration.

DISCUSSION

Applicant states in their present petition that a declaration and power of attorney was received at the United States Patent and Trademark Office on 08 May 2007. Section 503 of the Manual of Patent Examining Procedure under the heading "RETURN POSTCARD" states, in part:

"If a receipt of any paper filed in the Patent and Trademark Office is desired, it may be obtained by enclosing with the paper a self-addressed postcard identifying the paper. The Patent and Trademark Office will stamp the receipt date on the card and place it in the outgoing mail.

A postcard receipt which itemizes and properly identifies the papers which are being filed serves as prima facie evidence of receipt in the PTO of all the items listed thereon on the date stamped thereon by the PTO."

Here, applicant has provided a copy of their date-stamped filing receipt. The receipt identifies the application by Express Mail number, application serial number, and docket number. The receipt itemizes, inter alia, an Executed Declaration. The receipt is stamped "PCT/PTO 08 May 2007" across its face. However, a review of the application file reveals that the declaration filed on 08 May 2007 is not located therein and applicant has not submitted a true copy of the declaration with the present petition.

At this time, it is not appropriate for the Office to withdraw the Notification of Abandonment (Form PCT/DO/EO/909) mailed 16 November 2007 without a true copy of the declaration filed on 08 May 2007.

CONCLUSION

For the reasons discussed above, applicant's petition is **DISMISSED** without prejudice.

Applicant is hereby given a **TWO (2) MONTH** time period from the mail date of this communication in order to file a proper response. A proper response must include a true copy of an acceptable declaration alleged to have been filed on 08 May 2007 together with an appropriate statement verifying that the declaration is a true copy.

Extensions of time under 37 CFR 1.136(a) are available.

Any further correspondence with respect to this matter deposited with the United States Postal Service should be addressed to the Mail Stop PCT, Commissioner for Patents,

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Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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